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Gibraltar

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I. General

1. Gibraltar[1] is a Non-Self-Governing Territory administered by the United Kingdom of Great Britain and Northern Ireland. The Territory is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus about 1.6 kilometres long. The Spanish port of Algeciras lies 8 kilometres across the bay to the west; the continent of Africa is situated 32 kilometres across the Strait of Gibraltar to the south. According to the administering Power, the area of Gibraltar is 5.9 square kilometres, and according to Spain, which claims sovereignty over the Territory, it is 4.8 square kilometres. Issues relating to the water off Gibraltar are also a subject of contention. In 2006, the Territory had a population of 28,875, comprised of 23,447 Gibraltarians and 5,428 people from throughout Europe and North Africa.[2]

II. Constitutional, legal and political issues

2. In accordance with the Gibraltar Constitution Order 2006[3] that came into force on 2 January 2007, the Governor of Gibraltar represents the British monarch in the Territory. The Governor is responsible for the conduct of external affairs, defence, internal security (including the police, in conjunction with the Police Authority for Gibraltar) and for certain appointments as conferred on him by the Constitution. The Governor, together with the Council of Ministers, constitutes the Government of Gibraltar.[3] Following an election, the Governor, acting at his discretion, shall appoint as Chief Minister the elected member of the Parliament who, in his judgement, is most likely to command the greatest measure of confidence among the elected members of the Parliament. The Ministers other than the Chief Minister shall be appointed by the Governor, acting in accordance with the advice of the Chief Minister, from among the elected members of the Parliament.

3. Gibraltar has a Supreme Court allowing for appeals to a Court of Appeal and thence to Her Majesty in Council, acting on the Privy Council's advice. The 2006 Constitution provides for the establishment of a Judicial Service Commission, which was set up under the Judicial Service Act 2007, No. 2007-26.[4] The Judicial Service Commission has executive powers, subject only to an exceptional power of veto by the Governor, to advise the Governor in respect of certain matters, such as the appointments to the offices of the Chief Justice and other members of the judiciary. The Governor, with the prior approval of a Secretary of State, may disregard the advice of the Judicial Service Commission in any case where he judges that compliance with that advice would prejudice the British monarch's service.[3]

4. According to the media, the Judicial Service Act 2007 was seen by the incumbent as diminishing the responsibilities of the Chief Justice.[5] As a result of the

[1] The information contained in the present paper has been derived from information transmitted to the Secretary-General by the administering Power under Article 73 *e* of the Charter of the United Nations and from information provided by the Government of Spain and other published sources, including those of the territorial Government.

[2] Information provided by the administering Power, 8 February 2008.

[3] www.gibraltar.gov.gi/constitution.

[4] www.gibraltarlaws.gov.gi/articles/2007-26o.pdf.

[5] www.vox.gi/Politics/Chief_Justice_Leaves_Contested_Courts.htm, 2 March 2007.

ensuing controversy involving this and other issues, the Chief Justice was suspended by the Governor in early 2008. On the advice of the Judicial Service Commission, the Governor subsequently appointed a tribunal under section 64(4) of the Constitution to advise him on whether the question of the removal of the Chief Justice of Gibraltar should be referred to the Judicial Committee of the Privy Council.[6] Three weeks of public hearings into the matter are scheduled to start on 7 July 2008.[7]

5. Under the Gibraltar Constitution Order 2006, the British monarch retains full power to make laws from time to time for the peace, order and good government of Gibraltar. Included in those powers are laws amending or revoking the Constitution. The Constitution Order also makes provisions regarding Crown lands in Gibraltar.

6. According to the 2006 Constitution, the Governor shall dissolve Parliament in preparation for the next general election four years from the date of the first meeting of Parliament after any general election, unless it has already been dissolved.[8]

7. The last general elections in Gibraltar were held on 11 October 2007. The incumbent Gibraltar Social Democratic Party obtained 49 per cent of the vote, followed by the Gibraltar Socialist Labour Party, with almost 32 per cent and the Liberal Party with over 13 per cent. Peter Caruana, leader of the Gibraltar Social Democratic Party, was reappointed Chief Minister of Gibraltar for a fourth term. Joseph Bossano of the Gibraltar Socialist Labour Party continues as leader of the opposition, which comprises the Gibraltar Socialist Party and the Liberal Party.[9]

8. After a 10-year campaign to exercise the right to vote in European elections, in June 2004, Gibraltarians took part in the last European parliamentary elections due to the fact that they were considered by the administering Power to be part of the south-west England region, for electoral purposes.

9. Gibraltar's 2006 Constitution is an outcome of the United Kingdom's White Paper entitled "Partnership for progress and prosperity: Britain and the Overseas Territories", presented to Parliament in March 1999, which spoke of each Territory's need for a constitutional framework to suit its own circumstances.[10] In June 1999, Gibraltar's House of Assembly set up a Select Committee on constitutional reform and on 27 February 2002 formally adopted a report on the matter seeking "maximized self-government".

10. The Chief Minister submitted the Territory's constitutional reform proposals to the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom on 22 December 2003. Negotiations began in 2005 aimed at modernizing Gibraltar's Constitution in such a way that Gibraltar would remain British, but in a non-colonial relationship with the United Kingdom. The discussions were held exclusively between the United Kingdom and a cross-party representation from Gibraltar, led by the Chief Minister.

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[6] www.panorama.gi, 18 September 2007.

[7] http://business.timesonline.co.uk, 21 February 2008.

[8] http://www.gibraltar.gov.gi/constitution/new_constitution/NewGibraltarConstitution.pdf; gibfocus, 8 November 2007, www.gibfocus.gi.

[9] http://electionresources.org/panorama/archive/2007_10_12_archive.html.

[10] "Partnership for progress and prosperity: Britain and the Overseas Territories", White Paper submitted to the House of Commons on 17 March 1999 by the United Kingdom Secretary of State for Foreign and Commonwealth Affairs; reproduced in A/AC.109/1999/1, annex.

11. On 27 March 2006, the Foreign Secretary of the United Kingdom announced in a written statement to the British House of Commons that the details of a new Constitution had been agreed between the delegations of the United Kingdom and Gibraltar. On 30 November 2006, the Gibraltar constitutional referendum was held and the new Constitution was approved by 60.24 per cent of those who voted, while 37.75 per cent voted against and the remainder returned blank votes.[11]

12. In his letter dated 22 January 2007 addressed to the Secretary-General (A/61/710), the Permanent Representative of the United Kingdom to the United Nations informed that the new Constitution of Gibraltar had been given effect by an Order-in-Council on 14 December 2006 and that the new Constitution had entered into force on 2 January 2007. Noting that it recognized the right of self-determination of the Gibraltarian people, the Permanent Representative said that the new Constitution provided for a modern relationship between Gibraltar and the United Kingdom that was not based on colonialism.

13. In this connection, as previously reported,[12] Spain stated that the 2006 Constitution was an improvement and a modernization of its Government that in no way affected the international capacity of Gibraltar, and that the adoption of the Gibraltar Constitution Order 2006 was a reform of the colonial regime, which remained unaltered. The Spanish Government further stated that the referendum of 30 November 2006 was a local initiative which represented the democratic expression of the inhabitants of Gibraltar to give them a more efficient Government system and that it did not affect in any way the pending decolonization process of Gibraltar, to which the principle of self-determination did not apply.[13]

14. The positions of the administering Power, the territorial Government and the Government of Spain, including in the context of the Forum of Dialogue on Gibraltar, are reflected below.

III. Economic conditions

A. General

15. Gibraltar has no known natural resources and lacks agricultural land. Prior to 1980, the economy was largely dependent on United Kingdom Ministry of Defence expenditures. With the downsizing of the military base, the economy has increasingly become focused on tourism and the provision of financial services, including banking, insurance, shipping and portfolio management. The currency of Gibraltar is the pound sterling.

16. According to the administering Power, the gross domestic product (GDP) of Gibraltar as of October 2007 was £599.2 million, a per capita GDP of £20,831, with the inflation rate estimated at 2.8 per cent.

17. According to the administering Power, Ministry of Defence of the United Kingdom, which used to employ over 20 per cent of the Territory's labour force, now employs around 8 per cent and contributes about 7 per cent to Gibraltar's GDP.

[11] Information provided by the administering Power, January 2007.
[12] See A/AC.109/2007/12.
[13] Information provided by the Government of Spain, March 2007.

Defence expenditures in Gibraltar for 2007-2008 are expected to be broadly in line with those of previous years — approximately £63 million. On 2 May 2007, the United Kingdom's Minister of State for the Armed Forces informed the House of Commons that as at 31 March 2007, some 350 regular forces personnel were stationed in Gibraltar.[14] According to Spain, information pertaining to the United Kingdom, shared in the context of the Treaty on Conventional Armed Forces in Europe indicates that as at 1 January 2008, there were 818 British armed forces personnel deployed in Gibraltar. Further information concerning Gibraltar's military installations can be found in the 2005 working paper (A/AC.109/2005/11). Recent airfield and airport arrangements are outlined below.

18. In his 2008 New Year's message, the Chief Minister referred to the continuing success that Gibraltar had been able to achieve in its economy. He said that in addition to funding the transformation of Gibraltar and massive tax cuts for everyone, the economic success had created jobs for Gibraltarians and non-Gibraltarians alike, in numbers and of a quality that had never been higher.[15]

B. Public finance

19. According to the administering Power, the territorial Government's revenue for the year ending on 31 March 2007 was £212.2 million, and its expenditure was £156.3 million.[2] This represented a 7 per cent increase in revenue over the previous year, derived mainly from income tax and higher revenue from import duties.[16]

20. The corporate tax rate is 35 per cent for utility companies. Other companies are taxed at very low rates and, in practice, the offshore sector remains untaxed.

21. According to the administering Power, capital investment projects have continued to enhance and modernize all physical aspects of facilities in Gibraltar across a wide range of areas, including affordable housing, health care, education, improved infrastructure and recreational facilities. The estimated capital investment for 2007 was approximately £116 million.[2]

22. According to the Spanish Government, as a result of the Córdoba agreements of September 2006 between Spain, the United Kingdom and Gibraltar (addressed below in the section on the Forum of Dialogue on Gibraltar), Spain has invested about €1.5 million in customs and police facilities in the La Linea area.[17]

C. Trade

23. In 2006, total imports and exports including petroleum products amounted to £1,059.9 million and £797.7 million, respectively. Some 32 per cent of Gibraltar's non-fuel imports originated from the United Kingdom. Other major sources of imports included Denmark, the Netherlands, and Spain.[2]

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[14] www.fco.gov.uk; House of Commons Debates — Hansard, 2 May 2007, www.publications.parliament.uk/pa/cm/cmhansard.htm.

[15] www.gibraltar.gov.gi, 3 January 2008.

[16] Chief Minister's 2007 Budget speech, www.gibraltar.gov.gi/budget.

[17] See A/AC.109/2007/12/Corr.1.

24. The territorial Government has welcomed the Territory's trade-related efforts that draw on commercial opportunities offered by recently improved relations with Spain.[16]

D. Banking and financial services

25. According to the administering Power, Gibraltar has a well-developed financial sector, which is regulated by an independent statutory body, the Financial Services Commission. The Commission includes a full-time chief executive officer in an ex officio capacity and seven other people, at least two of whom have significant regulatory experience in another jurisdiction, appointed by the Gibraltar Minister responsible for financial services, from nominations made by the Commission.[18]

26. As previously reported, the Gibraltar Finance Centre, established in 1997, is charged with the marketing and promotion of financial services, input into strategic planning, including the various international initiatives, product development and liaison with the private sector and the regulator. Furthermore, Gibraltar's efforts to ensure successful regulatory systems have met with international recognition from the Organization for Economic Cooperation and Development and others, and it is generally recognized that Gibraltar is among the most stringently policed jurisdictions, with enforcement to appropriate high standards. However, because it has no tax information exchange agreements in force, Gibraltar has no internal legislation to obtain information to respond to a request for exchange of information for tax purposes.[12] Additional information is contained in Working Paper A/AC.109/2007/12.

27. In its Country Report No. 07/157 of May 2007 entitled "Gibraltar: detailed assessment report on anti-money-laundering and combating the financing of terrorism", the International Monetary Fund stated, inter alia, that the Gibraltar authorities had done well in implementing improvements to Gibraltar's "anti-money-laundering and combating the financing of terrorism regime" in the banking sector, keeping abreast of evolving standards. At the same time, the report stated that Gibraltar needed to take a number of steps to move its legal and regulatory regime forward. For instance, the report suggested that the criminal laws on money-laundering should be consolidated, and powers currently available only in drug-related money-laundering cases should be extended to money-laundering cases involving the proceeds of other crimes.[19]

E. Transportation, communications and utilities

28. Regarding road transportation in and out of Gibraltar, new arrangements came into force on 20 December 2006 as a result of the Córdoba agreements, including the introduction at the fence/frontier of lanes in both directions and red and green channels, for both people and vehicles. Customs and police checks remain necessary, since Gibraltar does not belong to the European Union customs union.

[18] www.fco.gov.uk.

[19] www.imf.org/external/pubs/ft/scr/2007/cr07157.pdf.

Moreover, the United Kingdom (and thus Gibraltar) is outside the so-called Schengen area for external borders purposes.

29. There are regular airline services linking Gibraltar to several airports in Europe, including in London and Madrid.[20]

30. As previously reported,[12] the United Kingdom Government is responsible for all international obligations relating to aviation safety and security in respect of Gibraltar Airport, with the Ministry of Defence retaining ownership of and operational responsibility for the military aviation aspects of the airfield.[21] In June 2007, the territorial Government and the Ministry of Defence agreed that the Government of Gibraltar would assume responsibility for commercial relations with civilian users of the airport, as well as for the economic aspects of civilian use. Under that agreement, the territorial Government was to assume the conduct of all commercial interface with airlines and other civilian users, including capacity management and commercial flight scheduling. In return for control over the commercial aspects of civilian use of the airfield, and for retaining landing and parking fees (previously paid to the Ministry of Defence), the territorial Government will split with the Ministry of Defence, the cost of airfield services for both civilian and military aircraft[22] provided by the Ministry of Defence, with the Government and the Ministry of Defence each covering half of the costs.

31. According to the territorial Government, a new air terminal will be completed within the next year. The location and internal design of the airport terminal reflect the commitments entered into under the Forum of Dialogue's Córdoba agreements, addressed below. The new airport runway underpass tunnel, the related Devil's Tower Road/Eastern Beach dual carriageway and related multi-storey car parks are expected to decongest traffic.[16]

32. As the Strait of Gibraltar is a principal water route between the Mediterranean Sea and the rest of the world, Gibraltar is used as a port by many long distance liners and cargo ships.

F. Tourism

33. Arrivals in Gibraltar by land comprise mainly day visitors arriving from Spain; arrivals by air are primarily from the United Kingdom; and arrivals by sea comprise ferry arrivals from Morocco and day-trip arrivals from cruise ships.

34. According to the territorial Government, the number of visitors in 2006 increased by 5 per cent to approximately 8.2 million. The visitors spent an estimated £210 million while in Gibraltar. The number of cruise passengers rose by 12 per cent to a total of 211,000 spread across 202 ship calls. Employment in tourism-related sectors, such as hotels, restaurants and transport, continued to rise, going up by 114 jobs in 2006.[16]

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[20] http://www.gibraltar.gov.uk.

[21] 2007 Budget speech; www.gibnet.com/texts/annex2.pdf.

[22] www.chronicle.gi, 27 June 2007; 2007 Budget speech; www.nao.org.uk/publications/nao_reports 07-08/07084.pdf page 25; and www.gibraltar.gov.gi press release No: 40/2008 of 18 February 2008.

IV. Social conditions

A. Labour

35. Information provided by the administering Power for 2007 put the number of employees in Gibraltar at 18,485, constituting an increase of 9.5 per cent over the preceding year. The number of people employed by the five largest sectors was as follows — banking and finance, 3,666; public administration and defence, 2,886; wholesale and retail trade, 2,088; building and construction, 3,106; and medical and health services, 1,722. The unemployment rate was an estimated 3.5 per cent.[2]

B. Human rights

36. Gibraltar's Constitution of 2006 includes an updated chapter on the fundamental rights and freedoms of the individual.[23] Meanwhile, the right of individual petition under the European Convention on Human Rights was accepted by the United Kingdom on a permanent basis for Gibraltar on 14 January 2006. Gibraltar's legislation is thus expected to comply with the obligations under the Convention. However, according to media reports in early March 2008 reflecting the views of a well-known civil society organization in Gibraltar, under current Gibraltar law, judges are required only to "take into account" Convention decisions and opinions. In the context of Gibraltar's efforts to comply with the Convention, the Chief Minister acknowledged, in reply to a question put to him in the House of Commons Foreign Affairs Committee on 5 March 2008, that there was an issue about the equalization of the age of consent; this issue continues to be the subject of debate in the Territory.[24]

C. Social security and welfare

37. According to information provided by the administering Power for the year 2007, the social security and welfare sectors in Gibraltar are governed by the Social Security (Employment Injuries Insurance) Act (1952), under which benefits are paid for injury, disablement and industrial deaths; the Social Security (Closed Long-Term Benefits Scheme) Act (1996) and the Social Security (Open Long-Term Benefits Scheme) Act (1997), which cover old-age pensions, guardian allowances and widow benefits; and the Social Security (Insurance) Act (1955) and the Social Security (Non-Contributory Benefits and Unemployment Insurance) Act (1955), which include maternity grants, maternity allowances and death grants.[25]

38. In implementation of the 2007-2008 budget, the Territory's Ministry of Social Affairs announced in July 2007 an increase in entitlements for child welfare grants and disability allowances.[26]

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[23] A/AC.109/2007/12, para. 36; www.gibraltar.gov.gi/constitution.

[24] www.gibfocus.gi, 5 March 2008; www.panorama.gi, 6 March 2008.

[25] Information provided by the administering Power on 8 February 2008; Summary of Budget Measures — 2007, http://www.gibraltar.gov.gi.

[26] http://www.gibraltar.gov.gi/latest_news/press_releases/2007/159-2007.pdf, 11 July 2007.

39. With regard to the settlement of the issue of the pensions of the former pre-1969 Spanish workers in Gibraltar which had been reached at the ministerial meeting of the Forum of Dialogue on Gibraltar on 18 September 2006, 99 per cent of the 5,700 affected Spanish pensioners have accepted the settlement.[27]

D. Public health

40. The Gibraltar Health Authority is responsible for providing health care in Gibraltar. The expenditure of the Authority for the period 2007-2008 was £56.1 million.[28] The new 166-bed St. Bernard's Hospital at Europort, which opened in February 2005, provides a comprehensive outpatient service and inpatient treatment for acute medical and surgical cases. Life expectancy in Gibraltar is 78.5 for males and 83.3 for females.[29]

E. Education

41. Education is governed by the Education and Training Act of 1974. Education is free and is compulsory for children between the ages 5 and 15.[2] The Department of Education and Training is in charge of public education in Gibraltar. According to the administering Power, expenditure on education for 2007 was £21.8 million. A programme of major improvements to Government schools was completed in 2007 at a cost of £1.4 million.

42. There are 13 primary schools, of which 11 are Government-run, 1 is a private school, and 1 is a services school. There are also four single-sex secondary schools, two which are Government-run, and two which are private schools. The Territory's secondary schools present pupils for the General Certificate of Secondary Education examinations offered by the awarding bodies of the United Kingdom. There is also a technical and vocational college, where 380 students were enrolled in 2007. The same year, 523 Gibraltarians were pursuing higher education in the United Kingdom, funded by the territorial Government, which covers the cost of university and college tuition fees.[2]

43. As previously reported, on 18 September 2006, in its joint ministerial statement, the Forum of Dialogue on Gibraltar welcomed the proposal of the Spanish Government to open an Instituto Cervantes in Gibraltar. As agreed, the Gibraltar Government is in the process of making suitable premises available.[30]

F. Crime and crime prevention

44. Law enforcement in the Territory is the responsibility of the Royal Gibraltar Police, in conjunction with the Gibraltar Police Authority established under the Police Act 2006, No. 2006-20,[31] which came into effect on 22 February 2007. In

[27] www.gibraltar.gov.gi/latest_news/press_releases/2007/CommuniqueForumOfDialogueOnGibraltar.pdf; 26 March 2007.

[28] http://www.gibraltar.gov.gi/gov_depts/govt_finance/Public_Finances2007_08.pdf.

[29] Information provided by the administering Power, February 2008.

[30] A/AC.109/2007/12; www.panorama.gi, 22 January 2008.

[31] www.gibraltarlaws.gov.gi/articles/2006-20o.pdf.

accordance with the Act, the Governor has overall ultimate responsibility for the integrity, probity and independence of policing in Gibraltar, and for the policing aspects of national security, including internal security.

45. According to the territorial Government, during the 2006-2007 reporting period there were 1,628 criminal offences committed in Gibraltar, within the following categories: assault on police (39); violence against the person (113); sexual offences (19); theft, burglary, robbery etc. (407); criminal damage (516); dangerous drugs (471); deception-related offences (46); and other offences (17).[32]

46. The United Nations Convention against Transnational and Organized Crime was signed on 15 November 2000 by the United Kingdom and extended to Gibraltar on 27 November 2007.[33] In January 2008, Spain communicated to the United Nations Secretariat a note containing, inter alia, the following declaration, effected on 18 January: "The Gibraltarian authorities are local in character, and exercise competence exclusively over internal affairs that originate in and are based on the powers allocated to and conferred on them by the United Kingdom, in accordance with its domestic legislation and in its capacity as the sovereign State upon which depends the said Non-Self-Governing Territory." Spain went on to say that consequently, any involvement by the Gibraltarian authorities in the implementation of this Convention should be understood to take place exclusively within the framework of the internal affairs of Gibraltar.[34]

V. Forum of Dialogue on Gibraltar

47. As previously reported,[12] negotiations between the United Kingdom and Spain on the subject of Gibraltar led in 2004 to the establishment of a Forum of Dialogue on Gibraltar, separate from the Brussels Process. A joint press release by the Spanish Ministry for Foreign Affairs, the British Foreign and Commonwealth Office and the Government of Gibraltar dated 16 December 2004 stated, inter alia, that in the Forum, "without prejudice to their constitutional status (including the fact that Gibraltar is not a sovereign independent State), each of the three parties will have its own, separate voice and each will participate on the same basis. Any decisions or agreements reached within the Forum must be agreed by all three participants. If the three parties wish to take a decision on an issue in the Forum where formal agreement would properly be between the United Kingdom and Spain, it is understood that the United Kingdom will not agree thereto without the Government of Gibraltar's consent".

48. Since the establishment of the Forum, there have been several rounds of discussions, both before and after the ministerial meeting of the Forum on 18 September 2006, when a package of agreements, known as the Córdoba agreements, were reached. The agreements are aimed at enhancing the economic and social development of both Gibraltar and the surrounding region, in particular the Campo de Gibraltar, and cover such areas as pensions for pre-1969 Spanish workers in Gibraltar, the Gibraltar airport, telecommunications, the fence/frontier,

[32] Abstract of Statistics 2006, Table 27: Criminal Offences, 1999-2007, page 25, Source: Royal Gibraltar Police; www.gibraltar.gov.gi/gov_depts/Statistics; Royal Gibraltar Police, The Policing Plan 2006-2007, http://www.gibraltar.gov.gi/judiciary/police index.htm.

[33] C.N.1130.2007.Treaties; C.N.1130.2007.Treaties-19 (Depositary Notification).

[34] C.N.69.2008.Treaties-1 (Reissued) and letter from Spain, 54/IPE/ac, 17 January 2008.

and the establishment of an Instituto Cervantes in Gibraltar.[35] Implementation of the agreements is ongoing. As previously reported,[12] the participants stated in the ministerial communiqué of the Forum that those agreements had no implications whatsoever regarding sovereignty and jurisdiction, and that the Government of Gibraltar understood and accepted that references to sovereignty in the communiqué are bilateral to the United Kingdom and Spain.

49. The latest meeting of the Forum, its seventh, took place on 5 and 6 November 2007 in Castellar de la Frontera. The three participants reviewed the implementation of the arrangements reached at Córdoba and, in a communiqué issued at the end of the meeting, acknowledged the satisfactory implementation of all the agreements.

50. Moreover, the participants had a preliminary discussion of the possible aims and objectives for each of the issues on the forward agenda of the Forum, namely, cooperation on environment, financial services and taxation, judicial and police issues, education, maritime communications and visa-related issues.[36]

VI. Future status of the Territory

A. Position of the administering Power

51. In a statement at the 6th meeting of the Fourth Committee, held on 15 October 2007, during the sixty-second session of the General Assembly (see A/C.4/62/SR.6), the Permanent Representative of the United Kingdom, Sir John Sawer, intervened in exercise of the right of reply. As reflected in the summary record of that meeting, the Permanent Representative stated, inter alia, that the United Kingdom welcomed the continued progress of the trilateral process of dialogue among the Governments of the United Kingdom, Spain and Gibraltar. The agreements already reached were being implemented without prejudice to the respective positions of the United Kingdom and Spain on sovereignty, on which the United Nations had not taken a view.

52. Moreover, the Permanent Representative said that his Government welcomed the decision by the people of Gibraltar to accept the new Constitution, which provided for a modern relationship between Gibraltar and the United Kingdom. It was regrettable that the outdated approach of the Special Committee on decolonization seemed not to have allowed for that to be recognized. The criteria used by the Committee to determine whether a Non-Self-Governing Territory should be "de-listed" failed to take into account the way that relationships between the United Kingdom and Gibraltar and between the United Kingdom and other Overseas Territories had been modernized in a manner acceptable to both sides. Gibraltar was now politically mature, and its relationship with the United Kingdom was non-colonial in nature.

53. Continuing, the Permanent Representative said that, as a separate territory recognized by the United Nations, Gibraltar enjoyed the individual and collective rights accorded by the United Nations Charter. The new Constitution therefore confirmed the right to self-determination of the Gibraltarian people. That right was

[35] www.gibnet.com/texts/trip_1.htm.

[36] www.gibraltar.gov.gi.; http://www.gibraltar.gov.gi/latest_news/press_releases/2007/250-2007_Communique_VII_Forum.pdf.

not constrained by the Treaty of Utrecht except insofar as it gave Spain the right of refusal should Britain ever renounce sovereignty. Thus, independence would be an option only with Spanish consent. The Government of the United Kingdom recognized that the act of deciding in the referendum to accept the new Constitution was an exercise of the right of self-determination by the Gibraltarian people. The Constitution did not in any way diminish British sovereignty, and the United Kingdom retained its full international responsibility for Gibraltar, including its external relations and defence, in full accord with the freely expressed wishes of the people of Gibraltar. The Permanent Representative went on to say that the Government of the United Kingdom did not accept that the principle of territorial integrity had ever been applicable to the decolonization of Gibraltar, nor that the existence of a sovereignty dispute implied that the people of Gibraltar did not have the right to self-determination. He further reaffirmed the United Kingdom's longstanding commitment to the people of Gibraltar that it would never enter into arrangements under which they would pass under the sovereignty of another State against their wishes.

B. Position of the territorial Government

54. Speaking to the Fourth Committee on 15 October 2007, the Chief Minister of Gibraltar, Peter Caruana, stated, as reflected in the summary record of that meeting, that in November 2006 the people of Gibraltar had voted in a referendum organized entirely by the Gibraltar Government, with no participation whatsoever on the part of the United Kingdom Government, to accept a new constitutional relationship with the United Kingdom. The new Constitution gave Gibraltar complete self-government, except in matters relating to foreign affairs and defence, and was not the Constitution of a sovereign independent State, because the people of Gibraltar, for various reasons, did not believe that independence was the best option for their territory. The Governor functioned solely as the representative of the British monarch, not as the representative of the United Kingdom, and he exercised the powers vested in him solely in that capacity. In the view of the Chief Minister, the United Kingdom had neither the power nor the ability to act as an administering Power in Gibraltar, nor did it demonstrate any wish to do so. Gibraltar should therefore be removed from the list of Non-Self-Governing Territories and the United Kingdom should accordingly be relieved of its reporting obligation in connection with Gibraltar under the Charter. The Chief Minister concluded by saying that the trilateral Forum of Dialogue was functioning well and the initial agreements reached in September 2006 were being successfully implemented. The Gibraltar Government was fully committed to the Forum and to building constructive bridges with Spain based on mutual respect.

C. Position of the Government of Spain

55. Speaking at the 6th meeting of the Fourth Committee on 15 October 2007 (see A/C.4/62/SR.6), the Deputy Permanent Representative of Spain, Iñigo de Palacio, intervened as reflected in the summary record of that meeting. Mr. de Palacio said, inter alia, that the question of Gibraltar was an ongoing priority for his Government. As recognized in General Assembly resolutions and decisions, the continuation of the colonial situation in Gibraltar was not in conformity with the Charter of the

United Nations because it undermined the unity and territorial integrity of Spain. Thus, in the process of decolonizing Gibraltar, it was necessary to address and definitively settle the related sovereignty issues. That stance had been clearly reflected in the conclusions of the Caribbean regional seminar on decolonization held in Saint George's, Grenada, in May 2007. Further, his Government regretted that, despite its expressions of willingness to resume negotiations with the United Kingdom on the sovereignty issues concerning Gibraltar, no progress had been made since the preceding session of the General Assembly and the decolonization of Gibraltar was thus no closer to becoming a reality. Mr. de Palacio said that the principle of self-determination did not apply to Gibraltar, as it would have in the absence of a sovereignty dispute, since decolonization of that Territory could only result from bilateral negotiations between Spain and the United Kingdom. The Deputy Permanent Representative went on to say that his Government remained fully committed to the process it had launched for that purpose with the British Government in 1980.

56. Meanwhile, the speaker said, the United Kingdom claimed to have undertaken a commitment to the population of Gibraltar, as reflected in the new Constitutional Order, not to enter into any sovereignty arrangements against the Gibraltarians' wishes. However, the Spanish Government believed that that should not serve as an excuse for avoiding sovereignty negotiations, which would, in any event, take the interests of the Gibraltarian population into account. Otherwise, the United Kingdom would be in breach of both the mandate which the General Assembly had consistently reiterated since 1965 and the commitment it had made to Spain in 1980 to seek a definitive solution through dialogue between the two countries. Meanwhile, the Spanish Government would continue to act in good faith and hoped that negotiations could be held in due course in order to make genuine progress towards decolonization.

D. United Kingdom-Spain negotiations

57. There were no bilateral negotiations on Gibraltar during 2007 within the framework of the so-called Brussels Process, which is separate from the Forum of Dialogue on Gibraltar. According to information provided by Spain, on 1 March 2007, the Foreign Minister of Spain reaffirmed to the Spanish Parliament that the Brussels Process was fully in force. Moreover, on the occasion of the visit to Spain of the United Kingdom Foreign Secretary, David Miliband, on 6 September 2007, the Spanish Minister of Foreign Affairs, Miguel Ángel Moratinos, stated at a joint press conference that the questions on sovereignty were always present in conversations with the United Kingdom. Spain suggested that it be examined with the United Kingdom how best to deal with these questions, with the aim of achieving results to reach a definitive solution. Further, Mr. Moratinos said that now the Forum of Dialogue on Gibraltar existed, and progress should be made with the objective of negotiating sovereignty at the right moment.

58. Moreover, according to information provided by Spain, two agreements were reached on 19 December 2007 between the United Kingdom and Spain regarding arrangements involving the Gibraltar authorities for formal communications and decisions requiring notification in the context of (a) mixed agreements to which the

European Community/European Union is a party; and (b) any international treaty to which the European Community/European Union is not a party.[37]

59. On 8 January 2008, Foreign Secretary Miliband stated to the House of Commons that under the "Agreed arrangements relating to Gibraltar authorities in the context of mixed agreements", a system of "post-boxing" would apply for communications between Spanish and Gibraltar authorities, but not for communications between the authorities of other States and Gibraltar. The same arrangements would also apply for communications between Gibraltar and Spain in the context of the "Agreed arrangements relating to Gibraltar authorities in the context of certain international treaties".[38]

E. United Kingdom-Gibraltarian discussions

60. The Governments of the United Kingdom and Gibraltar have both recognized that the 2006 Constitution provides for a modern and mature constitutional relationship between the two sides, which is not based on colonialism.

61. As part of an inquiry conducted during 2007-2008 by the House of Commons Foreign Affairs Committee on the British Overseas Territories, on 5 March 2008 the Chief Minister gave evidence with regard to the Territory.[39] On the subject of decolonization, the Chief Minister stated in a written submission made available to the press that both the territorial Government and the Government of the United Kingdom believed that the United Nation's de-listing and decolonization criteria were anachronistic. Nonetheless, the Chief Minister recognized that, under Article 73 (e) of the United Nations Charter, the United Kingdom was obliged to continue to submit annual reports until such time as the General Assembly voted in favour of the removal of a Territory from its list of Non-Self-Governing Territories. The United Kingdom was not free to unilaterally discontinue the submission of annual reports about Gibraltar.[40]

VII. Consideration by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

62. A representative of Spain attended the Caribbean regional seminar on the implementation of the Second International Decade for the Eradication of Colonialism, held at Saint George's, Grenada from 22 to 24 May 2007, and made a statement.

63. The Special Committee discussed the question of Gibraltar at its 3rd meeting, on 5 June 2007 (see A/AC.109/2007/SR.3), and had before it the 2007 working

[37] Note verbale of 7 February 2008, No. 110, from Spain addressed to the Secretary-General.
[38] Hansard, 8 January 2008, www.publications.parliament.uk/pa/cm/cmhansrd.htm.
[39] http://www.publications.parliament.uk/pa/cm200708/cmselect/cmfaff/uc147-iv/uc14702.htm.
[40] Ibid., www.panorama.gi, 5 March 2008; www.gibfocus.gi, 5 March 2008; see also Government Of Gibraltar Press Office, Press Release No. 54/2008, 12 March 2008; and www.mercopress.com, 13 March 2008.

paper concerning the Territory (A/AC.109/2007/12 and Corr.1). Statements were made by the representative of Spain, the Chief Minister, and the leader of the opposition in Gibraltar. On the proposal of the Chairman, the Committee decided to continue consideration of the question at its next session and, in order to facilitate consideration of the question by the Special Political and Decolonization Committee (Fourth Committee), to transmit the relevant documentation to the General Assembly.

B. Special Political and Decolonization Committee (Fourth Committee)

64. The Fourth Committee considered the question of Gibraltar at its 6th meeting, on 15 October 2007 (see A/C.4/62/SR.6). At that meeting, statements were made by the Deputy Permanent Representative of Spain, Íñigo de Palacio, the Chief Minister of Gibraltar, Peter Caruana, and a petitioner, Joseph Bossano, leader of the opposition. At its 5th meeting, on 11 October, the Fourth Committee heard a statement by the representative of the United Kingdom regarding the 10 Territories that are on the United Nations list of Non-Self-Governing Territories administered by the United Kingdom (see A/C.4/62/SR.5). At its 9th meeting, on 22 October, the Fourth Committee adopted a draft decision on the question of Gibraltar (A/C.4/62/L.4) without a vote.

C. Action by the General Assembly

65. At its 76th plenary meeting, on 17 December 2007, the General Assembly, on the recommendation of the Fourth Committee, adopted a decision (62/523) without a vote. The decision reads as follows:

> "The General Assembly, recalling its decision 61/522 of 14 December 2006 and the statements agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland in Brussels on 27 November 1984,[41] and in Madrid on 27 October 2004, and noting the establishment, pursuant to the latter, of the tripartite Forum of Dialogue on Gibraltar, separate from the Brussels Process, under the statement made jointly by the Governments of Spain, the United Kingdom and Gibraltar on 16 December 2004:
>
> (a) Urges both Governments, while listening to the interests and aspirations of Gibraltar, to reach, in the spirit of the 27 November 1984 statement, a definitive solution to the question of Gibraltar, in the light of relevant resolutions of the General Assembly and applicable principles, and in the spirit of the Charter of the United Nations;
>
> (b) Welcomes the successful outcome of the first package of measures concluded at the tripartite Forum of Dialogue on Gibraltar."

[41] See A/39/732, annex.